

## INSTRUCTIONS FOR STRIP LIEN MOTIONS

1. File a motion, which should include allegations of the facts set forth in the proposed Order and Notice below,<sup>1</sup> specifically:

- ☐ Identify Debtor's (or Debtors') real property by its street address, including county and ZIP code (the "Property")
- ☐ Set forth the fair market value of the Property and the basis for that valuation.

In most cases, a professional appraisal will be appropriate to establish value.

- ☐ Attach to the motion a copy of the appraisal report as Exhibit A
- ☐ Identify the holder of the first priority lien ("First Lender") by name, the amount of its outstanding claim and if it has filed a proof of claim. If a proof of claim has been filed, include the claim number.
- ☐ Identify the holder of the subordinate priority lien (second, third, etc.)

("Junior Lender") by name, the amount of its outstanding claim and if it has filed a proof of claim. If a proof of claim has been filed, include the claim number.

2. Prepare and submit the proposed Order and Notice in the **form and format** set forth below, with Exhibit A attached. ***Submit the Order and Notice as an email attachment*** (in either Word or WordPerfect format) to ***Christina\_Lee@ganb.uscourts.gov***.

3. Upon entry of the Order and Notice, serve it **and the Motion** upon Debtor (or Debtors), the Junior Lender, the First Lender, and the Chapter 7 Trustee. The First Lender and Junior Lender should be served in accordance with Bankruptcy Rule 7004<sup>2</sup> **and** at the address for notices on any filed proof of claim, as well as upon any attorney who has appeared in the case for the creditor by signing the proof of claim or otherwise (see Judge Massey's monograph on service at his website). **Debtor's attorney must also promptly file a certificate of service of the Motion and the Order and Notice.**

4. After the Order and Notice is served and the objection time expires:

- ☐ If an objection is filed, the hearing scheduled in the Order and Notice will be held;
- ☐ If no objection is filed and if the Motion and the Order and Notice was properly served, Debtor's (or Debtors') attorney should send a proposed eOrder granting the Motion. That proposed order should be in **exactly** the form of the order attached as Exhibit A to the Order and Notice, with proper identification of the date and Doc. No. of the Order and Notice.

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<sup>1</sup> a/k/a a "New York Notice" giving advance notice of the order proposed for entry.

<sup>2</sup> If the first or second Lenders must be served by certified mail under Bankr. Rule 7004(h), include the certified mail receipt number, and remember to also serve by regular First Class mail.

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	)	CHAPTER 7
	)	
ANN BELLE DEBTOR,	)	CASE NO. <b>13-00001</b> - MHM
	)	
Debtor.	)	
-----		
	)	
ANN B. DEBTOR,	)	
	)	
Movant,	)	
v.	)	<b>CONTESTED MATTER</b>
	)	
CLAUDE B. CREDITOR,	)	
	)	
Respondent.	)	

**ORDER AND NOTICE ON STRIP LIEN MOTION**

On January 1, 2013, Debtor filed a motion to strip the junior lien held by Claude B. Creditor (Doc. No. \_\_) ("Motion"). In the Motion, Debtor alleges:

- Debtor's real property and residence is 1234 Abracam Way, Atlanta, Fulton County, Georgia (the "Property").
- The fair market value of the Property is \$ \_\_,\_\_.00, based upon an appraisal performed by C. J. Clay, whose report is attached to the Motion.
- BigBank ("First Lender") holds a first priority lien in the amount of \$ \_\_,\_\_.00, and has not yet filed a proof of claim.
- Claude B. Creditor ("Junior Lender") holds a second priority lien in the amount of \$ \_\_\_\_\_, and [*if* filed] has filed a proof of claim (Claim No. \_\_ ).

- Junior Lender's lien is wholly unsecured.

The Motion is available for review in the office of the Clerk, U.S. Bankruptcy Court between 8:00 a.m. and 4:00 p.m. or online anytime at <http://ecf.ganb.uscourts.gov> (registered users) or at <http://pacer.psc.uscourts.gov> (unregistered users). It is hereby

**ORDERED** that any person or party who objects to entry of **the order attached as Exhibit "A,"** granting the relief sought in the Motion:

1. **Must file** a written objection, stating the grounds therefor, on or before the close of business<sup>1</sup> \_\_\_\_\_ 201\_\_, with

Clerk, U. S. Bankruptcy Court  
1340 U. S. Courthouse  
75 Spring Street, S.W.  
Atlanta, Georgia 30303-3367;

2. **Must serve** a copy of said objection upon Debtor's attorney:

A.B. Attorney  
111 Alpha Place  
222 Forever Street  
Atlanta, Georgia 30303

so that such written objections are actually received by Debtor's attorney on or before the deadline set forth in Paragraph 1; and

3. **Must advocate** the objection at the hearing on the Motion.

If any objection is filed, hearing on the Motion will be held before the undersigned in Courtroom 1204, United States Courthouse, 75 Spring Street, S.W., Atlanta, Georgia 30303, on \_\_\_\_\_, 2013, at \_\_\_\_\_ o'clock \_\_.m.

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<sup>1</sup> Objections filed electronically may be filed up to 11:59:59 p.m. All other objections must be filed by delivery to the Clerk's Office at or before 4:00 p.m.

**Any objection not timely filed, served, and advocated at the hearing set above shall be deemed waived, and the proposed order attached to this order as Exhibit “A” may be entered without further notice or hearing.** It is further

**ORDERED** that, on or before \_\_\_\_\_, 2013, Debtor’s attorney shall serve a copy of this Order and Notice upon Debtor, First Lender, Junior Lender, and the Chapter 7 Trustee, and shall file a certificate of such service within three days thereafter.

**IT IS SO ORDERED**, this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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MARGARET H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE

Prepared by:

Name

State Bar No.

Address

City, State ZIP code

telephone:

fax:

email: *inItalics@domain.com*

**Attorney for Debtor**

**Exhibit A**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	)	CHAPTER 7
	)	
<b>ANN BELLE DEBTOR,</b>	)	<b>CASE NO. 13-00001 - MHM</b>
	)	
Debtor.	)	
-----		
Ann B. Debtor,	)	
	)	
Movant,	)	
vs.	)	CONTESTED MATTER
	)	
Claude B. Creditor, Inc.,	)	
	)	
Respondent.	)	

**ORDER GRANTING MOTION TO STRIP LIEN**

On \_\_\_\_\_, 2013, Debtor filed a motion seeking a determination of the secured status of the claim of Claude B. Creditor (“Respondent”) (Doc. No. \_\_ ) (“Motion”). Debtor asserts that Respondent holds a claim secured by a deed to secure debt on her real property known generally as 1234 Abracam Way, Fulton

County, Atlanta, Georgia (the “Property”); that Respondent’s deed to secure debt is subordinate to a prior deed to secure debt; and that the value of the Property is less than the amount of debt secured by the prior deed to secure debt. Debtor asserts that the Motion and notice of hearing were properly served on Respondent, who filed no response and did not oppose the Motion at the hearing.

The Motion seeks to void the junior security interest held by the Respondent pursuant to 11 U.S.C. §§506(a) and (d). *In re McNeal*, 2012 WL 1649853 (11<sup>th</sup> Cir. 2012), holds that the relief Debtor seeks should be granted. Because *McNeal* is an unpublished decision, however, it is not binding precedent pursuant to 11<sup>th</sup> Cir. R. 36-2 (2012). Nevertheless, the Court in *McNeal* concludes that controlling precedent on this issue in the Eleventh Circuit is *In re Folendore*, 862 F. 2d 1537 (11<sup>th</sup> Cir. 1989), notwithstanding the Supreme Court’s ruling after *Folendore* in *Dewsnup v. Timm*, 502 U.S. 410 (1992). As *McNeal* and *Folendore* provide a basis for the relief the Motion seeks and Respondent has not opposed the Motion, it is hereby

**ORDERED** that the Motion is ***granted***: Respondent’s lien on the Property is deemed ***void*** with respect to Debtor’s interest in the Property and shall be extinguished automatically, without further court order, upon entry of the Chapter 7 discharge in this case.

**ORDERED** that in the event this case is dismissed, in accordance with 11 U.S.C. § 349 (b) (1) (C), Respondent’s lien shall not be affected by this Order.

[END OF DOCUMENT]

Prepared by:

Name

State Bar No.

Address

City, State ZIP code

telephone:

fax:

email: *inItalics@domain.com*

**Attorney for Debtor**

## **DISTRIBUTION LIST**